

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-496

August 5, 2003

CYNTHIA WHEELER
Appeal of Consumer Assistance Division
Decision #2003-14552 Regarding Unitel, Inc.

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we uphold the decision of the Consumer Assistance Division (CAD) and direct Unitel to credit its customer Cynthia Wheeler for calls she made within Unitel's premium calling area for which MCI charged her toll rates.

II. BACKGROUND

On January 21, 2002, Ms. Wheeler contacted CAD concerning a billing dispute she had with Unitel. When Ms. Wheeler dialed a certain number in Bangor at a 299 exchange from her Newburgh exchange (234), she was charged as if the call were a toll call. The Bangor exchange is within Unitel's premium calling area and therefore there should be no additional charges beyond her monthly premium calling charge. The 299 NXX is assigned to AT&T. Unitel responded that they have not reprogrammed their switch to recognize 299 as a local Bangor exchange because AT&T never requested it nor has AT&T entered into the necessary contractual arrangements with Unitel.

On April 25, 2003, CAD issued its decision. It found that the Bangor exchange is part of Unitel's premium calling area. Since Ms. Wheeler subscribes to premium calling, there should be no toll charges assessed on any calls she makes to the Bangor exchange. CAD directed Unitel to credit Ms. Wheeler for any past (approximately \$60) and future charges incurred when calling the 299 exchanges.

On May 2, 2003, Unitel appealed the decision. First, Unitel claims that it cannot credit Ms. Wheeler's account because it is MCI that charged Ms. Wheeler and not Unitel. Second, it asserts that it has not identified the 299 NXX assigned for AT&T to the Bangor rate center as a local NXX within Unitel's switch because AT&T has never requested Unitel to do so. It states that a written agreement for the exchange of traffic is necessary to resolve questions about how the traffic is to be routed. According to Unitel, such good faith negotiations are required by the TelAct and the TelAct only requires it to deliver this type of traffic to its boundary. Unitel further maintains that the question of who will be responsible to pay any tandem transit charges beyond the boundary must also be resolved. It asks that the Commission open a docket to consider these generic issues.

III. DECISION

We have directed our staff to meet with Unitel and other local exchange carriers to determine if a generic problem exists based on the issues raised by Unitel. In the meantime, however, Unitel has an obligation to abide by our orders, rules, and its own tariffs. In 1994, pursuant to Chapter 204, Basic Service Calling Area Rule, the Commission ordered Unitel to include the Bangor exchange in Newburgh's premium calling area. *Public Utilities Commission, Proposed Rate Schedules in Compliance with Basic-Service Calling Area Rules (Chapter 204)*, August 22, 1994 Order at 2. Unitel must take whatever steps are necessary to ensure that its customers in the Newburgh exchange who subscribe to the premium calling area plan are not charged toll rates by their toll carriers for calls made to the Bangor exchange. We also agree with CAD's determination that Unitel should credit Ms. Wheeler for the charges by MCI, as Unitel incorrectly handed the Bangor-bound traffic off to MCI. We find that the underlying disagreement Unitel may have with AT&T does not relieve it from complying with Commission orders, rules and its own tariffs. Therefore, we uphold CAD's decision and direct staff to meet with Unitel to address the generic issues raised in its appeal.

Dated at Augusta, Maine, this 5th day of August, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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